

ZONING BOARD OF APPEALS
Regular Meeting - May 13, 2002

7:30 P.M. - ROLL CALL - Motion to accept minutes of 3/25 & 4/8/02

PRELIMINARY MEETINGS:

- 1. NORTH PLANK DEVELOPMENT - Request for use and possible area variances for proposed single-family dwelling on Walsh Road in NC zone. (14-7-19 & 20).**
- 2. COLANDREA, BARBARA - Request for 10 ft. side yard & 10 ft. rear yard for 8 ft. fence at 23 Ellison Drive in R-4 zone. (23-1-33).**
- 3. CORBETT, JOSEPH - Request for 2 ft. height variance for 8 ft. fence at 21 Ellison Drive in an R-4 zone. (23-1-34).**
- 4. DENHOFF DEVELOPMENT - Request for 14 ft. bldg. hgt. and 22 parking space variance for construction of commercial building at front portion of 124 Windsor Highway in a C zone. (9-1-15.1).**
- 5. SALAMOTOFF, CONNIE - Request for variation of Sec. 48-26B for construction of single-family dwelling on Lawrence Avenue in R-4 zone. (15-6-10).**
- 6. HOUSE OF APACHE, LTD. - Referred by P.B. for 13,008 lot area variance for an easement through Monroe Muffler (Apache) property for Hannaford Bros. located on Rt. 94 in a C zone. (70-1-2.1).**

PUBLIC HEARING:

- 7. DREYER, DARRYL - Request for 6 ft. rear yard variance for existing rear at 353 Nina Street in R-4 zone. (73-3-3).**
- 8. SMITH, ROGER - Request for 25 ft. front yard, 15 ft. side yard, 10 ft. rear yard and 248 sq. ft. min. livable floor area for construction of single-family residence at 17 Shaw Road in R-1 zone, (53-3-1).**
- 9. ROBERTS, DONALD - Request for 28 ft. rear yard variance for existing addition with deck at 2177 Little Britain Road in R-1 zone. (55-1-2).**
- 10. TRAPP, DIANE - Request for 9.5 ft. rear yard variance for existing deck at 115 Glendale Drive in R-4 zone. (25-5-20).**

11. **COPLAN, KAREN** - Request for 24.8 ft. front yard variance for existing single-family dwelling w/ attached garage at 18 Cherie Lane in R-4 zone. (44-1-36).

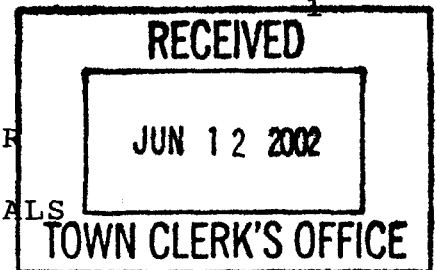
Formal Decisions: (1) Digeratu (2) Fidanza

Pat 563-4630 (o) or 562-7107 (h)

May 13, 2002

TOWN OF NEW WINDSOR
ZONING BOARD OF APPEALS

MAY 13, 2002



MEMBERS PRESENT: LAWRENCE TORLEY, CHAIRMAN
MICHAEL KANE
LEN MCDONALD
MICHAEL REIS
STEPHEN RIVERA

ALSO PRESENT: MICHAEL BABCOCK
BUILDING INSPECTOR

ANDREW KRIEGER, ESQ. (ARRIVING LATE)
ZONING BOARD ATTORNEY

PATRICIA CORSETTI
ZONING BOARD SECRETARY

REGULAR MEETING

MR. TORLEY: I'd like to call to order the May 13,
2002 meeting of the Zoning Board of Appeals.

APPROVAL OF MINUTES

MR. TORLEY: Entertain a motion on the minutes.

MR. KANE: I move we accept the minutes for 3/25 and
4/8 as written.

MR. REIS: Second it.

ROLL CALL

MR. REIS	AYE
MR. KANE	AYE
MR. RIVERA	AYE
MR. MC DONALD	AYE
MR. TORLEY	AYE

PRELIMINARY MEETINGS:

NORTH PLANK DEVELOPMENT

Daniel Bloom, Esq. and Mr. Gregory Shaw appeared before the board for this proposal.

MR. TORLEY: Request for use and possible area variances for proposed single-family dwelling on Walsh Road in NC Zone.

MR. SHAW: Good evening. For the record, my name is Greg Shaw from Shaw Engineering and with me tonight is Dan Bloom, who is the attorney for the project and John Lease, III who was the applicant which is North Plank Development Corporation. We're here before you tonight for a petition for a use variance in addition to possibly other area variances which we'll get into in a second. The parcel that's under review tonight is on Walsh Road opposite of the cemetery, maybe about 600 feet from Route 9W and it abuts a residential house on the westerly side and on the easterly side also to the rear of it are lands of a commercial nature. The property is in an NC zone. My client originally came to me and told me that he's under contract to purchase it and wanted me to come up with some appropriate use on this lot. I told him it was rather small, 50 feet by 75 feet at its narrowest dimension. When I sat down and looked through the permitted use in the NC zone, I could not come up with anything that was appropriate for that lot or for that neighborhood. Something as very simple as a garage, I looked into that, and again, it just would not fit. In discussion as to what truly would work on that site was a residence, was a house, that immediate part of Walsh Road is not a commercial strip, yes, when you get down to the corner, you get the Reis Insurance Agency, but for the most part, it's a rural residential street. As I said, with the cemetery across the street from it and with that, we discussed probably the best use of that property was that of just of a single family house. Similar to what's next door to it, possibly 20 feet away. Unfortunately, a residence is not permitted in an NC zone, therefore, we're here tonight to discuss the possibility of a use variance to allow a residence in

an NC zone. If you will notice on the sketch I incorporated a zoning schedule and I laid out the bulk requirements for both the NC zone and the R-4 zone. I had to pick a residential zone, I wasn't sure what zone would be appropriate because the bulk requirements vary from zone to zone. So when he submitted it to the building inspector for a rejection to allow me to come before the board, he noted that yes, we need a use variance and also other area variances that the board felt were appropriate for this piece of property. So that's why we're here tonight to discuss the use variance and also whatever other area variances would be appropriate to allow the construction of a 30 by 30 foot single family dwelling on this lot.

MR. TORLEY: You are I'm sure aware of the requirements for a use variance, Greg?

MR. SHAW: Yes, that's why we have Mr. Bloom with us tonight.

MR. TORLEY: You have several problems with that, first off, how long has the present owner had the property?

MR. SHAW: I don't know the answer to that. Yes, maybe Mr. Lease does?

MR. LEASE: About 20 years.

MR. TORLEY: You'd have to show that he, when he purchased the property, the zoning would have permitted him to do, to put this house on there. Otherwise, I would consider this to be coming under a self-created hardship. If you couldn't put a house up there 20 years ago, it's self-created. Second, this Walsh Road area is a very strangely populated or developed area with mixed uses, but this piece of property then begins to fail the unique requirement cause there are other small pieces of property that are either commercial, residential or commercial mixed in. So the question you have to face is defend uniqueness. The reasonable return statute you have to defend this, maybe this piece of property is just too small to do anything with it, and the Section 4826-E non-conforming lot, if you looked at that or the Town Board has decided in Section

F or the minimum size that you can talk about in the Section E is 5,000 square feet. You're saying this piece of property is 4,163 square feet?

MR. BLOOM: Yes.

MR. TORLEY: Section F of that paragraph or block says it is the finding of the Town Board that the development of non-conforming lots not meeting the involved criteria we're just talking about lot size here, a lot under 5,000 square feet is considered not suitable for residential construction period. I don't know whether we have the authority to vary that part of the code. To my mind, please feel free to discuss it and you have the answer but you have a very high amount of hurdles to get through for a piece of property that just may not be buildable.

MR. BLOOM: If I may be heard on that, Mr. Chairman. We are keenly aware of the burden and we realize it is a substantial burden. However, when my client approached the subject matter with Mr. Shaw and myself, the basic original motivation well really wasn't to develop something that was going to necessarily generate an income flow for my client, so much as to try to select the construction for the lot which would be most compatible with the neighborhood itself, so that my client could derive a minimum income from it while at same time not just be palatable to the neighbors, but hopefully, and from his perspective he believes actually upgrade the quality of life in the neighborhood for the other residential owners. Now, I realize that you directed our attention I think quite properly at that section of the code which deals with minimum lot, the minimum size lots available but the minimum size lot developable under the code but I do respectfully suggest that my client, certainly the present owner of the property would have a right, a constitutional right not to have the property taken without due process. And I would also respectfully suggest that if we were to determine that this particular piece of land must lay fallow and people must pay taxes on it in perpetuity, so to speak, that verges on a taking, so what we're trying to do here is establish some type of development, minimal though it

may be on the lot which would be compatible with the code in the spirit of the code and at the same time enhance the quality of life for the neighbors.

MR. TORLEY: Gentlemen? Again, you have the right to a public hearing and speaking to the audience in general, you're seeing now why we have preliminary meetings, so the applicant can understand the kind of questions we're going to be asking him at a public hearing because by law, everything we do has to be done at a public hearing. We have these preliminary meetings just so everybody is on the same page and the applicants have a fair opportunity at a public hearing. Now, these gentlemen are professionals and it's not really necessary for them, but many of you in the audience this will be the only time in your life you have to do this, so we, that's why we hold preliminary meetings and again, the questions I have asked you are things you have to defend at the public hearing. I'm interested in the history of the property and at what point if any single family residence could have been legally placed on this property, given the size constraints of it. Gentlemen, any questions you have?

MR. REIS: Greg, did you say that it's the current size, shape, current location, everything being equal that there's nothing within the code that you could build on this without requiring any variance?

MR. SHAW: Correct, what I said when we first examined the parcel for the permitted uses in the NC zone, which is what it is permitted for, we could not come up with any use that we could put on the lot and comply with the setbacks, okay, and the minimum lot areas, the bulk requirements were quite stringent, even if I went to the most simplest which would be a garage, just a simple garage that would fit in the NC zone, I think is inappropriate for that lot and for that neighborhood. But again, it's an NC zone and even a garage wouldn't work. And what seemed to make the most sense independent of the zone and the use variance is that it's a residential area and there's a house 20 feet, the next door house is approximately, well, it's less than ten feet away from the property line and again, that's the house that you're looking at. And we

thought it would be most appropriate for our neighbors, for that neighborhood in New Windsor would be to put a residence on there, again understanding that it requires a use variance which as the Chairman mentioned is tough to get. But again, we feel that is the best use of the property.

MR. TORLEY: And you'd be prepared to show at the public hearing the standard that now dollars and cents for each and every permitted use in a NC zone that could not return a reasonable, make a reasonable return cause area variances are much lower hurdles obviously than use variances so you'll be prepared to do that?

MR. SHAW: Yes.

MR. TORLEY: Gentlemen?

MR. REIS: Accept a motion?

MR. TORLEY: Yes.

MR. REIS: Make a motion that we set up North Plank Development.

MR. KANE: Do you want to, we handled the part whether that's a use or not, do you want to touch on the area variances they may need at the public hearing or one step at a time?

MR. TORLEY: At a course I was recently at, they had a suggestion as to how you handle the area variances that fall in after you do a use variance which we have had, what do you use and their suggestion was you write the variances to fit the building, you just say that's what it is.

MR. KANE: Just wanted to cover that base.

MR. TORLEY: Don't try to make a variance because it doesn't fit everything.

MR. BABCOCK: As they are in the zone.

MR. TORLEY: For what they want to do.

MR. BABCOCK: The zone or the building?

MR. TORLEY: The problem is that that residential zone in every use is different uses. Simply state that we grant them a use variance with these setbacks and side yards.

MR. BABCOCK: Okay, so you don't need any numbers, if you grant this use variance, you grant it based on this application and this survey?

MR. TORLEY: If that should happen.

MR. KANE: So what we'll definitely need is definite numbers on side yard, front yard.

MR. BABCOCK: They're on there.

MR. REIS: All those things being already established, I make the motion that we set up North Plank Development for the requested area variances and use variance for Walsh Road property.

MR. MC DONALD: Second it.

ROLL CALL

MR. REIS	AYE
MR. KANE	AYE
MR. RIVERA	AYE
MR. MC DONALD	AYE
MR. TORLEY	AYE

(Whereupon, Mr. Krieger entered the room.)

COLANDREA, BARBARA

MR. TORLEY: Request for 10 ft. side yard and 10 ft. rear yard for 8 ft. fence at 23 Ellison Drive in R-4 zone.

Mrs. and Mrs. Colandrea appeared before the board for this proposal.

MRS. COLANDREA: Actually, that's not correct, my neighbors are here also, they're number 3, the Corbetts. I have a 6 foot fence and I just was hoping to make it an eight foot fence in the rear of my yard.

MR. TORLEY: This is the difficulty you're having with the neighbors?

MRS. COLANDREA: No, no, no, they want to do the same thing because Squire Village parking lot is right there, so we wanted to hopefully raise our fence higher so we don't have that.

MR. KANE: So you only want to do it on the--

MRS. COLANDREA: There's just the fence on the rear part of the yard.

MR. KANE: So nothing on the side?

MRS. COLANDREA: No.

MR. TORLEY: Mike, I know it's because they want to put an eight foot fence counts as a building, so you have to have the--

MR. BABCOCK: That's correct.

MR. KANE: Why the side yard?

MRS. COLANDREA: I don't want anything on the side.

MR. COLANDREA: It should read like number 3, he's our next door neighbor here for the same thing.

MS. CORSETTI: Change the notice of approval, it says

rear and side.

MR. BABCOCK: Yes, you can cross out the side yard variance, it's just the rear yard.

MRS. COLANDREA: That's the existing fence now.

MR. TORLEY: You want to make it two feet higher?

MRS. COLANDREA: Yes, you can see the parking lot and the dumpster and everything.

MR. KANE: The fence, it's not going to block any vision lines for traffic?

MRS. COLANDREA: No.

MR. KANE: I understand it's in your back yard, may seem like a dumb question, but we want to get it in the record.

MR. TORLEY: These are the kinds of things you'll be asked at the public hearing because by the state law, I want to is not enough reasons why.

MR. KANE: You feel the higher fence is going to be put in for safety reasons, privacy reasons?

MRS. COLANDREA: Or privacy.

MR. TORLEY: Improve the value and marketability of your house?

MRS. COLANDREA: To keep the rats out that are coming from the dumpster as well.

MR. TORLEY: One thing just to remind you of that there's nothing in the code about how high plants can be, say for blocking vision, so you can put all the trees and bushes you want without a variance.

MR. COLANDREA: There are trees there, those belong to Squire Village and nothing will grow in front of them because the sun will never hit them.

MR. TORLEY: Bring that up. Gentlemen?

MR. REIS: The current fence you own?

MRS. COLANDREA: Yes.

MR. TORLEY: If they, to avoid this, they'd have to, if they put up an eight foot fence, they'd have to be ten foot off the property line?

MR. BABCOCK: That's correct, that's why this was written up with a ten foot side yard also it says that anything in excess of 6 foot shall conform herein for buildings and if that was a shed, you'd also need a side yard variance because it's going closer to the side yard than the ten foot requirement for a building. So I guess that's why you thought that the side yard requirement was also required.

MR. TORLEY: Why don't we leave it in just to make sure, somebody else interprets it that way, not going to cost you anything more.

MR. BABCOCK: We probably should add that to the other one.

MR. KANE: I move that we set up Mrs. Colandrea for a public hearing on her requested variance on 23 Ellison Drive.

MR. REIS: Second it.

ROLL CALL

MR. REIS	AYE
MR. KANE	AYE
MR. RIVERA	AYE
MR. MC DONALD	AYE
MR. TORLEY	AYE

CORBETT, JOSEPH

Mr. Joseph Corbett appeared before the board for this proposal.

MR. TORLEY: Request for 2 ft. height variance for 8 ft. fence at 21 Ellison Drive in R-4 zone.

MR. CORBETT: Mr. Chairman, here's a picture.

MR. TORLEY: Do you not have a fence existing now?

MR. CORBETT: No.

MR. KANE: You're putting this fence up for privacy and safety reasons?

MR. CORBETT: Yes.

MR. KANE: Doesn't obstruct any vision of traffic?

MR. CORBETT: No.

MR. MC DONALD: Not over any easements?

MR. CORBETT: No, absolutely not.

MR. TORLEY: Unfortunately, you can't share the mailings.

MR. KANE: I move we set up Mr. Corbett for a public hearing for his requested variance at 21 Ellison Drive.

MR. MC DONALD: Second it.

ROLL CALL

MR. REIS	AYE
MR. KANE	AYE
MR. RIVERA	AYE
MR. MC DONALD	AYE
MR. TORLEY	AYE

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DENHOFF DEVELOPMENT

MR. TORLEY: Request for 14 ft. building height and 22 parking space variance for construction of commercial building at front portion of 124 Windsor Highway in a C zone.

Nobody is here right now so we'll move on.

SALAMOTTOFF, CONNIE

MR. TORLEY: Request for variation of Section 48-26B for construction of single family dwelling on Lawrence Avenue in R-5 zone.

Mr. Alex Salamotoff appeared before the board for this proposal.

MR. BABCOCK: I made a copy of the zoning Section 48-26B and attached it to the denial for the members, the members to read, this lot's a little unique, this particular lot is a corner lot. She also owns the lot next door and in 1988, they applied for a building permit to build on this lot and were successful in completing that application and obtaining a building permit. But it never materialized for whatever reason, maybe the applicant can tell you whatever that reason was. And now they have decided to go ahead and build on this lot and it falls into this Section 48-26B where it says two or more non-conforming lots in the same ownership, an approved subdivision by the planning board has three years from the final date of approval by the planning board to obtain a permit under provisions 46-26A. So basically, what it's saying they had three years from their planning board approval or three years from amendment of the zoning ordinance which made this lot non-conforming to apply for a building permit. I understand that date started sometime in 1986, I don't have the exact date, so they had three years from that time which in '88 was fine and they got their building permit. Now they're coming back and want to build a home here and they're forced to come and get a variance.

MR. TORLEY: In 1988, did the building permits have an expiration date?

MR. BABCOCK: Yes, that's exactly what happened, they had 18 months from July 18, 1988.

MR. REIS: Just as a point of reference, if they had extended that permit, they could have extended it over a period of time.

MR. BABCOCK: Yes, absolutely, yeah, if they would have extended or asked for an extension of the permit, which the building inspector's allowed to give, I'm not sure, I think it's a 6 month extension, then they can renew the permit, they can come in and get a building permit and pay a new fee and renew it.

MR. REIS: Any limit?

MR. BABCOCK: No.

MR. REIS: So they could have done that for the last ten years?

MR. BABCOCK: That's correct.

MR. TORLEY: Now, so this is several non-conforming lots, single ownership and they want to merge these lots and put up one house?

MR. BABCOCK: No, they have two lots one lot they own with a house on it, the other lot is vacant.

MR. KANE: What happened, sir, that you didn't proceed with the building?

MR. SALAMOTTOFF: My brother was a builder at the time and he severed his thumb, he had a major operation and he couldn't build. So, unfortunately, for two years, he did nothing, that's why the house never got built. But he went through everything, he had, I guess you put the stakes in the ground and all that stuff, just never went through with it.

MR. TORLEY: Refresh my memory, R-4 zone, what's the minimum lot size?

MR. BABCOCK: Today it's one acre.

MR. TORLEY: R-4?

MR. BABCOCK: Yes, that's where the problem comes, zone changes over the years and over time and actually, it's one acre today. Six months ago, it was, it would have been 15,000 square feet.

MR. TORLEY: So this, in essence, there has been an up-zoning of the requirements?

MR. BABCOCK: Yeah, the section of the code that you quoted for the first applicant non-conforming residential lots with 5,000 square feet or more, this would surely fit, that has water and sewer, it's fine, everything else. The problem, the only problem here is that the same person owns both lots. If they sold the lot, they wouldn't be here tonight. It's only because it's in the same ownership.

MR. TORLEY: So if this lot was sold to a person or corporation formed for the purpose of building a house on this lot, they wouldn't have to be here?

MR. BABCOCK: You have to understand something, we're dealing with Alex's mother. How old is your mother?

MR. SALAMOTTOFF: 74.

MR. BABCOCK: She doesn't really understand this concept.

MR. TORLEY: So if theoretically she sold this lot to her son for a dollar, that would be a second ownership and he would not be required for, cause this is a--

MR. BABCOCK: Well, I think since this is all transpired, I don't think you can do that now. I think that that's, I'm not sure, I'm not sure, I think we'd have to get legal advice about that, I asked her to do that and I have told her that that would be probably the right thing to do and she really doesn't.

MR. TORLEY: Well, we haven't done anything yet so correct, we have taken no action on this.

MR. KRIEGER: Yeah, the zoning board has taken no action on it, that's correct.

MR. BABCOCK: She would rather go for the variance, she doesn't want to do that.

MR. SALAMOTOFF: My father died in February, she doesn't want to live in the house no more, the house is for sale, it's under the assumption you can build on the lot, if you can build on that lot, the house is worth a 170,000. If you can't build on the lot, the house is worth 160,000.

MR. KRIEGER: Both lots for sale?

MR. SALAMOTOFF: It's being sold as a house with a lot you can build on with a variance. You'd have to get the variance. This is what they're doing, the house, as now, if I were to come here and get the variance, then whoever buys the house whether they want to build on it or not it doesn't mean anything to me. But from what the realtor's telling me, if you can get the variance, then the property looks more attractive. I personally wouldn't build on the lot, I mean, will the house on the property, it's basically too big for the property it's sitting on, so you'd need the lot to counteract it but--

MR. TORLEY: Don't say that. There is, however, and I'm sure Andy will correct me, they were describing some recent court decisions regarding lots that had been made non-conforming by upzoning and the difficulties of enforcing that.

MR. BABCOCK: Well, that's why we made the non-conforming lot of record, the Town Board has adopted that so you have 5,000 square foot lots that are out there, that's why they give the three year provision so that you have three years to obtain the building permit from the local law that made it non-conforming. So the town has done what they could do to make people or to let them build whenever they want. What happens is that this one little catch is that she happens to own both lots. If she, if Alex did own the other lot, he could obtain a building permit tomorrow morning.

MR. TORLEY: Well, let's set it up.

MR. KANE: Accept a motion?

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MR. TORLEY: Yes.

MR. KANE: Move we set up Connie Salamotoff for a hearing on a requested variance for the location on Lawrence Avenue.

MR. REIS: Second it.

ROLL CALL

MR. REIS	AYE
MR. KANE	AYE
MR. RIVERA	AYE
MR. MC DONALD	AYE
MR. TORLEY	AYE

DENHOFF DEVELOPMENT - CONTINUED

Mr. Gregory Shaw of Shaw Engineering appeared before the board for this proposal.

MR. SHAW: Thank you. Again, for the record, my name is Greg Shaw with Shaw Engineering. I'm representing Denhoff Development Corporation on a parcel of land a little less than two acres on the west side of Windsor Highway immediately below United Rentals. This plan you have seen before, I originally came before this board I think back in '89, '90 for a couple of variances, one was for a clock tower to allow the construction of a 50 foot clock tower in the middle of the building. We got that variance. I believe my client following that had come before this board a couple of times and got repeated extensions and I believe that variance has now expired. So we're back before this board tonight again asking for the variance for the clock tower and I may point out it's not the building height of the roof itself that's only going to be 30 feet high and we're allowed to go 36 feet high, it's just for the clock tower structure itself. We're here for an additional variance. This building before you, the 12,960 square feet is the identical size that we got site plan approval back in the very early '90's. We have actual architectural drawings. My client is ready to construct it. Nothing has changed with respect to this site, other than the zoning ordinance. And at the time we got site plan approval, we were allowed to deduct 25 percent of the building area for storage and the other 75 percent we had to provide parking for. Now, the zoning ordinance requires parking for a hundred percent of the building area, so before where we had enough parking now we're deficient. We're required to provide a total of 87 parking spaces and we're providing 65 parking spaces. Again, a function of the change in the zoning ordinance from the early '90's to this date. So that's pretty much it.

MR. KANE: What kind of storage is going in there, Greg?

MR. SHAW: All retail and for the public hearing, I do have the architectural drawings and it's quite

attractive, if I must say so myself. Unfortunately, the only other option if the parking variance is not granted is to go back and redo all the architectural drawings and reduce the size of the building.

MR. TORLEY: The Town Board has decided that based on the experience they had that that 25 percent set aside for reduction of parking space was causing problems and that's why we went to the hundred percent. So you have to be willing to speak as to why we should change the mind of the Town Board and let you still have the 25 percent reduction.

MR. SHAW: Yes.

MR. TORLEY: Since all the things have expired, you're starting from ground zero.

MR. SHAW: Correct, we have not made application to the planning board, the rejection was done at the chairman's request by your building inspector and this is our first stop. Once we get the variance that we hope to obtain, we'll return back to the board and submit an application for site plan approval.

MR. TORLEY: So that with the board operating under the planning board operating under its present codes have not seen this plan?

MR. SHAW: Correct, the chairman did not want to see it.

MR. BABCOCK: It's basically the same plan.

MR. TORLEY: Variances on the plan that may not be what the planning board likes.

MR. BABCOCK: Well, they have approved it in the past, the exact same size building, the exact same size clock tower, the exact same size, everything, the only thing that's changed is the parking requirements, we're not quite sure he's even subject to that, Mr. Chairman, but since the variance expired, we felt that he should ask for that, he has a three year period nobody wanted to research from the time of the zoning change that

required his parking change to now to comply.

MR. TORLEY: When is the zoning change made?

MR. BABCOCK: I don't know, there's so many of them, I can't keep track.

MR. KRIEGER: Procedurally speaking, so far as the affect on the ZBA is concerned, it isn't really much of a change because it was the practice of the planning board after looking at the map once it's determined if it, that it needs variances to send them to the zoning board, so they take no action on it anyway, in this case, they just did away with even looking at the map but it really serves no function. The difficulty is really the applicant's, the sense that if the applicant is successful in obtaining variances, then the applicant is pretty much locked in to what is presented in front of the Zoning Board of Appeals and if the planning board doesn't approve that, then they have a problem cause they have variances for something else. In this particular case, presumably the applicant since they have already been through the process is not concerned about the planning board process ultimately being negative, but they go to, any applicant goes to the zoning board first at their own peril in that sense they are locked in so that--

MR. REIS: Greg, we understand that you want to maximize the use of the property, do you happen to have potential leases potentially in place for this?

MR. SHAW: No, not at this point.

MR. MC DONALD: Is there a strong possibility that these 87 parking spots would all be occupied at one time?

MR. SHAW: If you ask the Town Board, they'd tell you very realistically. At the same point in time before the zoning law was enacted increasing the number of parking spaces all the businesses in New Windsor that were allowed the 25 percent reduction, they seemed to be operating fine. So I can understand the Town Board wanting to upgrade the standards, but at the same point

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in time, it doesn't mean that the previous standards were deficient.

MR. TORLEY: Gentlemen?

MR. REIS: Accept a motion?

MR. TORLEY: Yes.

MR. REIS: I make a motion that we set up Denhoff Development for the requested variances at 124 Windsor Highway.

MR. KANE: Second the motion.

ROLL CALL

MR. REIS	AYE
MR. KANE	AYE
MR. RIVERA	AYE
MR. MC DONALD	AYE
MR. TORLEY	AYE

HOUSE OF APACHE, LTD.

Larry Wolinsky, Esq. appeared before the board for this proposal.

MR. WOLINSKY: Good evening, Mr. Chairman, Larry Wolinsky here from Jacobowitz & Gubits. Let me give you some background. This is Tim Miller from Tim Miller Associates, he's the planner on the project. As some of you may already know, we have been at the planning board over a year for an extensive environmental review process which included the preparation of an environmental impact statement. We were at the point of site plan approval for the project when the planning board engineer advised the planning board that a shared easement, driveway easement, which is serving the secondary access for the project would require under the definition of lot area in your zoning ordinance a deduction from lot area and therefore, necessitating a lot area variance for the project in the amount of approximately 13,000 square feet. Basically, we read the definition of lot area differently and so what we have done is we established our application as a request for an interpretation or in the alternative, if you guys decide that we're wrong on that interpretation, we also believe we would be entitled under the legal standards for a lot area variance. Basically, this improves the existing design for Monro Muffler. What it entails basically is a modification of the existing access a little bit of a widening of it, some relocation of a couple parking spaces, there will actually be more parking spaces now than presently exist and now there will be a flow around the entire Monro Muffler building where that did not happen previously. The planning board recommended the variance to this board, that's in the minutes and we're hoping that we're in a position to have you folks proceed with a public hearing and I'm prepared to answer any questions you might have this evening.

MR. TORLEY: So you're asking for an interpretation and/or area variance?

MR. WOLINSKY: Correct.

MR. BABCOCK: Mr. Chairman, I think we should add one thing that I think they have their own property alongside of this entranceway, if that's not, if I'm correct in speaking and I think it's DOT's determination that that's where they want the entrance to Hannaford's. If that's not correct, am I speaking correctly when I say that?

MR. WOLINSKY: Well, DOT has reviewed this location and we're set at this location.

MR. BABCOCK: Right.

MR. TORLEY: So whoever owns the property immediately to the east of that two story existing building is going to come down?

MR. WOLINSKY: Yes.

MR. TORLEY: So the property immediately to the east is the same ownership as the rest of your property?

MR. MILLER: That's correct, that property is really part.

MR. BABCOCK: They don't want two entrances or two exits right next to each other.

MR. TORLEY: What's the other exit?

MR. BABCOCK: This is Monroe Muffler's present entrance.

MR. WOLINSKY: This one right here or where?

MR. TORLEY: I thought you said you owned the piece of property immediately to the east below that on the map.

MR. WOLINSKY: Right here, yeah, we'll be owning that piece of property.

MR. MILLER: It's a very small piece, it's a corner piece.

MR. TORLEY: I was asking about this chunk of land.

MR. MILLER: Talking about the piece right here, oh, I don't know the owner, it's not with this application.

MR. WOLINSKY: That's not us.

MR. KANE: So because it's an easement we have to drop the area?

MR. BABCOCK: Right.

MR. MILLER: Just big picture we really have three applications that have been before the planning board, one relates to the site itself where the supermarket is proposed, the second one relates to an amendment to the Monro Muffler because of the accessway and the third one relates to the Long John Silver's piece across 32 where we're aligning that driveway with the access from Hannaford, putting a signal there, in order to consolidate driveways and create a safer condition, so what this matter really relates to is a portion of the overall program relates to the site plan amendment proposed for Monro Muffler. They are all tied together, all three need to be dealt with simultaneously, but this is very specific to the Monro Muffler matter. If you go to your definitions in your zoning code regarding lot area, which might be a useful exercise, you'll see that the lot area suggests that that if an easement is encumbering the lot, that it only reduces the area of the lot if that easement would not permit development on the easement.

MR. WOLINSKY: It has the language in it or otherwise precluded from development.

MR. MILLER: It's clear that, you know, this easement would permit development at a minimum, we're developing a roadway on that portion of the property. So that's where we would respectfully request that the zoning board take a look at that, if you interpret in fact that that easement does not encumber the property to preclude development, then we're done and we can go back to the planning board and move this site plan forward.

MR. TORLEY: Mike, if that were the case just want to make sure this is increasing the developed area of the lot, we don't have a development area problem?

MR. KANE: Coverage.

MR. TORLEY: When you say we're taking 14,000, whatever it is.

MR. BABCOCK: No, it's not, so there's no developmental coverage in this zone.

MR. WOLINSKY: Reason we came up with that because if you think of it logically, if you look at, for example, a condo development, I think that's the easiest kind of situation to look at, every, all the common area in a condominium development is encumbered by easement which is the right of everybody who lives in that development to park there and go back and forth across the driveways and everything. So if you were to take a literal interpretation of the code and say that this did not or that precluded development then you would be creating all sorts of substandard situations in the town with, for example, respect to condo developments because all those driving areas and parking lots would have to be subtracted out of the lot area calculation.

MR. TORLEY: Are we making it impossible to build more condos?

MR. MILLER: We're more concerned about the history rather than--

MR. WOLINSKY: The other side is shopping centers often have tenants, they all have tenants, but sometimes the tenants own their lease pads and they all have leases and in all the leases in commercial shopping center there are reciprocal easement, reciprocal easement agreements, and if you interpret it in this manner, all those easements would come out and off the lot.

MR. TORLEY: Since either an interpretation or the area variance request requires a public hearing, we, I would entertain, you folks are experts in the area, I don't think you need rehearsal time, entertain a motion.

MR. RIVERA: Make a motion that we set House of Apache. Ltd. up for a public hearing for the 13,000 square feet lot area variance and/or interpretation and easement through Monro Muffler.

MR. KANE: Second the motion.

ROLL CALL

MR. REIS	AYE
MR. KANE	AYE
MR. RIVERA	AYE
MR. MC DONALD	AYE
MR. TORLEY	AYE

PUBLIC HEARING:

DREYER, DARRYL

MR. TORLEY: Request for 6 ft. rear yard variance for existing rear at 353 Nina Street in R-4 zone.

Mr. Darryl Dreyer appeared before the board for this proposal.

MS. CORSETTI: It says existing rear, it should say existing rear deck for everybody that happens to pick that up. For the record, we sent out 65 notices to adjacent property owners on April 26th.

MR. TORLEY: Is there anyone in the audience who wishes to speak on this matter? Let the record show there is none.

MR. DREYER: I would just ask that the zoning board approve my application for the variance. I submitted pictures at the preliminary hearing.

MR. KANE: How long has the deck been in existence?

MR. DREYER: The deck was built less than a year ago, I'd say it's been in existence approximately six to eight months.

MR. TORLEY: Replacement for another deck earlier?

MR. DREYER: Replacement for pre-existing deck that was enlarged slightly and has a barbecue bump-out.

MR. KANE: It would be a safety hazard if the deck wasn't there, walk out the sliding doors?

MR. DREYER: Absolutely.

MR. KANE: Did you create any water hazards or runoffs in the building of this deck?

MR. DREYER: No.

MR. KANE: Cut down any trees?

MR. DREYER: No, sir.

MR. KANE: Is the deck similar to other decks in your neighborhood?

MR. DREYER: Yes, sir.

MR. MC DONALD: Over any septic or easements?

MR. DREYER: No, it's municipal water and sewer.

MR. KANE: Any complaints formally or informally about the deck?

MR. DREYER: No. I did have it reviewed by a structural engineer, Paul Cuomo, who did certify its structural soundness.

MR. TORLEY: I was going to remind you that a variance from the setbacks would not give you any relief from any other building codes.

MR. DREYER: I'm fully prepared on the other needs, right.

MR. REIS: Accept a motion?

MR. TORLEY: Yes.

MR. REIS: I make a motion that we approve Mr. Dreyer's requested variance at 353 Nina Street.

MR. KANE: Second it.

ROLL CALL

MR. REIS	AYE
MR. KANE	AYE
MR. RIVERA	AYE
MR. MC DONALD	AYE
MR. TORLEY	AYE

SMITH, ROGER

Mr. Roger Smith appeared before the board for this proposal.

MR. TORLEY: Request for 25 ft. front yard, 15 ft. side yard, 10 ft. rear yard and 248 sq. ft. minimum livable floor area for construction of a single-family residence at 17 Shaw Road in R-1 zone.

MS. CORSETTI: For the record, we sent out 29 notices on April 29th.

MR. TORLEY: Anyone in the audience who wishes to speak on this matter? Let the record show there's none.

MR. TORLEY: Sir?

MR. SMITH: What I'm trying to do is go to five feet off the one side yard, I don't know why it keeps getting switched back over to 20 or 15, whatever you're saying there.

MR. KANE: Well, what it is is you're looking for a variance for the difference, you're required to have 20 feet, you have five feet, so the variance is 15.

MR. SMITH: Right.

MR. TORLEY: So your intention is to remove some existing trailers, regrade, improve the property and put a normal structure.

MR. SMITH: Right, right, where the house is going, there's a garage there and it's pretty much the same size minus the deck.

MR. KANE: And the house is 34 x 24?

MR. SMITH: Yes.

MR. KANE: So it's not an overly big--

MR. SMITH: No, it's basically sitting there now only it's a garage, it's ready to fall down, it's gonna have

to come down soon anyhow and the trailer's about the same condition.

MR. TORLEY: So these changes will improve the property, improve the marketability?

MR. SMITH: Yeah, raises everybody's property value around me and make the neighbors a lot happier, too.

MR. KANE: You couldn't set the house in the middle because the septic and the leach fields are all right in there?

MR. SMITH: Right, and then the, on the property line where I want to be closest to the other neighbor, he's way over here in the back corner and my other neighbor is closer to my property line.

MR. KANE: So, it's the best and safest place on the property to put it?

MR. SMITH: Yeah, cause otherwise, I'd be right on top of the other house, then that would also give me, I'd have to tear my garage down, we'll need a shed or something in the back to put all my stuff, so it would give me a corner to do that but that I wouldn't need a variance for, just need it for the house.

MR. TORLEY: In constructing this new house, you do not feel that you will be changing the drainage patterns or causing flooding problems for your neighbors?

MR. SMITH: No.

MR. KANE: House size will be similar to other houses in the area?

MR. SMITH: Yeah.

MR. TORLEY: Well, it's a little smaller.

MR. KANE: It's not going to change the nature of the character of the neighborhood?

MR. SMITH: Yeah, but, I mean, former trailer park

across the street where everybody owns their own lot, they have all been switched over to houses so when you look at that over there, it kind of fits in.

MR. REIS: Mike, what's the minimum dwelling size?

MR. BABCOCK: Minimum dwelling size is 1,200 square feet and this is, in this zone, he's proposing 952 square feet so he needs a variance of 248 square feet.

MR. TORLEY: For comparison, Mike, if you know this number, there's also a minimum size for if this were to be considered an apartment, there's a minimum size for apartments, is there not, just the idea being that they can see this is not smaller than an apartment could be?

MR. BABCOCK: No, I think there's a minimum on multiple dwellings that you might be talking about and I think that's 600 square feet.

MR. TORLEY: So it's larger than what would be required, we're it a multiple condo type development.

MR. REIS: Mike, unless the numbers we're looking at on a map that shows 24 foot by 34 foot.

MR. BABCOCK: It should be, yes.

MR. REIS: Equates to 816 feet, so I think there's a miscalculation in there.

MR. BABCOCK: We added the deck square footage, Mr. Chairman.

MR. TORLEY: Can you make that arithmetic correction?

MR. BABCOCK: Yes, we can.

MR. REIS: When we do square foot calculation for building permit cost, it includes the square footage of the deck so that's where they got that number from.

MR. TORLEY: Gentlemen?

MR. REIS: Accept a motion?

MR. TORLEY: Yes.

MR. REIS: The man is going to improve the property, make it better for everybody all around. I'll make a motion that we approve Mr. Smith's request for his variances at 17 Shaw Road.

MR. MC DONALD: Second it.

ROLL CALL

MR. REIS	AYE
MR. KANE	AYE
MR. RIVERA	AYE
MR. MC DONALD	AYE
MR. TORLEY	AYE

MR. KANE: Yes, just with the provision that we get the correct number for the square footage in there since we haven't mentioned that number yet and my vote is yes.

ROBERTS, DONALD

Mr. Donald Roberts and Stewart P. Glenn, Esq. appeared before the board for this proposal.

MR. TORLEY: Request for 28 ft. rear yard variance for existing addition with deck at 2177 Little Britain Road in R-1 zone.

MR. BABCOCK: Just for the record, the square footage he needs is 384 square feet.

MR. TORLEY: Anyone in the audience who wishes to speak on this matter? Let the record show there is none. Sir?

MR. GLENN: I'm Stewart Glenn, an attorney with Northrop, Stradar & Glenn with offices near the border from New Windsor. Mr. Roberts asked us to help him with this application for this area variance. One reason is that he was here for the preliminary meeting, apparently, and he has a hearing problem and he thinks he might of missed a few things. Anyway, I have Mr. Roberts' neighbors, the ones on either side and two down and their tenants have submitted letters in favor of granting this area variance. Mr. Roberts purchased the property I believe in '87, made improvements to the property and now there's some urgency that he sell the property and when he went to do that, found that he had neglected to obtain certain approvals, one being a variance of this board 28 foot rear yard setback because of the shape of the lot and he has an existing deck and a, I guess the garage that was converted to a room, he also in parallel with this application has had an engineer make an inspection and provide the documents to the building inspector's office on what he needs for to show that what was built there is appropriate. He's in kind of a quandary here, he feels that what he has done is improve the property and the neighborhood and it's the deck is in keeping with the same type of decks that are in the area, I believe including the one next door which he tells me has a variance and so we would request that you would approve his area variance so that he can go forward and sell the property.

MR. KANE: For the record, how long has the addition and the deck been there?

MR. ROBERTS: Ten years.

MR. KANE: Any complaints formally or informally?

MR. ROBERTS: No, matter of fact, one of my neighbors she followed the same thing that I did she liked it so well.

MR. KANE: Creation of any water hazards or runoffs?

MR. ROBERTS: No.

MS. CORSETTI: For the record, we sent out 16 notices on April 24.

MR. TORLEY: I don't know if you have a copy of the plan but the nature of the lake behind it, it's an irregularly shaped lot, we're in receipt from the applicant of four letters from neighbors, I haven't read them all from Louis Cicero (phonetic).

MR. ROBERTS: That's the new neighbor, Kevin, I don't know his--

MR. TORLEY: John Drose, D-R-O-S-E and Sandra Ryan, all have no objection to the variance request. There's a concrete cover there, what's that?

MR. ROBERTS: I have no idea, it was, it's a little round thing in the ground there and I don't know what that's for, it was there when I moved there and I don't bother with it.

MR. MC DONALD: Move it or anything?

MR. ROBERTS: No, septic up front.

MR. KRIEGER: So you would have an adequate space in the back yard as measured against the farthest away line due to the fact that this, you have Green Lake behind you and the property--

MR. ROBERTS: I can park my boat and car there and still drive around.

MR. TORLEY: I'm familiar with the area, I have been driving by and seen from the corner of your deck and it's a nice setup.

MR. MC DONALD: Accept a motion?

MR. TORLEY: Yes, sir.

MR. MC DONALD: I make a motion that we grant Mr. Roberts' request for the 28 foot rear yard variance for the existing addition.

MR. RIVERA: Second it.

ROLL CALL

MR. REIS	AYE
MR. KANE	AYE
MR. RIVERA	AYE
MR. MC DONALD	AYE
MR. TORLEY	AYE

TRAPP, DIANE

Ms. Diane Trapp appeared before the board for this proposal.

MR. TORLEY: Request for 9.5 ft. rear yard variance for existing deck at 115 Glendale Drive in R-4 zone.

MS. TRAPP: It's a shed, also a shed and a deck, I gave you all the paperwork at the preliminary, here are all the pictures. The only thing that changed we had the deck re-strained to match the house last weekend, an improvement.

MR. KANE: The existing deck, how long has it been up?

MS. TRAPP: Over ten years, I believe, I bought the house that way with the deck on it.

MR. KANE: What about the shed?

MS. TRAPP: Same.

MR. KANE: Any complaints formally or informally?

MS. TRAPP: No.

MR. KANE: Deck size, nature of the deck and the shed, they're similar to other ones in your neighborhood?

MS. TRAPP: Yes, one of the pictures you can see the other shed on the other side, same sheds.

MR. KANE: Create any water hazards or runoffs on it?

MS. TRAPP: No.

MS. CORSETTI: For the record, we sent out 81 notices to adjacent property owners on April 25th.

MR. KANE: It would be financially inconvenient to move the shed?

MS. TRAPP: There'd be nowhere else to put it.

MR. TORLEY: Now I'm looking at a variance for a deck and a shed, the deck is 9.5 foot rear yard, so we're saying that the deck variance for the shed would cover the deck.

MR. BABCOCK: No, there's two different denials, there's two, there's one for a deck, one for a shed.

MR. TORLEY: Okay, one is the side yard for the shed which is proposed is two feet and variance request of 8 feet for the shed, the second is the variance request for the deck of 9.5 feet.

MR. BABCOCK: There's also a rear yard for the shed which is two foot from the property line.

MR. TORLEY: Two foot rear and two foot side.

MR. MC DONALD: That's because it's in the corner?

MR. BABCOCK: That's correct, that's the same situation as the fence that we were talking about.

MR. TORLEY: We have a somewhat unusually shaped lot, the deck is similar, not necessarily similar but similar to other kinds of decks?

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MS. TRAPP: Yes.

MR. TORLEY: Deck wasn't there, it would be a hazard on your house?

MS. TRAPP: It would be a hazard to me.

MR. TORLEY: Deck is not causing any water drainage?

MS. TRAPP: No.

MR. KANE: Covered that.

MR. TORLEY: Neither one's built over any easements?

MS. TRAPP: No.

MR. KANE: Accept a motion?

MR. TORLEY: Yes.

MR. KRIEGER: If you were to move the shed, you would have to remove trees and--

MS. TRAPP: Yes, it's all tree lined down the side and across the back and I would still need a variance cause there'd be nowhere to put it, there'd be no way to put it off the property line, what is it, ten foot?

MR. BABCOCK: That's correct.

MR. KANE: I make a motion that we approve the requested variances for Diane Trapp at 115 Glendale Drive.

MR. REIS: Second it.

ROLL CALL

MR. REIS	AYE
MR. KANE	AYE
MR. RIVERA	AYE
MR. MC DONALD	AYE
MR. TORLEY	AYE

COPLAN, KAREN

Mr. Joel Coplan appeared before the board for this proposal.

MR. TORLEY: Request for 24.8 ft. front yard variance for existing single family dwelling with attached garage at 18 Cherie Lane in R-4 zone.

MR. COPLAN: I'm here to ask the board to approve our request for a variance on the garage that was done in 1980 and at that time, it did meet setback requirements and I plead guilty to not being aware of the fact that upon completion I had to go forward and get Certificate of Occupancy and so I find myself in a situation now where I no longer meet setback requirements and I'm requesting a variance of I believe 24.8 feet front yard.

MR. KANE: Any complaints formally or informally about the garage?

MR. COPLAN: No, sir.

MR. KANE: Did you create any water hazards or runoffs in the creation of it?

MR. COPLAN: Not at all.

MR. TORLEY: Again, this is a property with three front yards?

MR. BABCOCK: At least.

MR. TORLEY: This falls under a uniquely shaped lot.

MR. RIVERA: How many letters were sent out?

MS. CORSETTI: Twenty-five and no response.

MR. TORLEY: Anyone in the audience who wishes to speak on this matter? Let the record show there is none.

MR. KANE: The garage itself doesn't stick forward, the garage, when it was built, but the garage itself isn't

in front of the house?

MR. COPLAN: No.

MR. KANE: One corner because of the unique shape of the lot?

MR. COPLAN: Correct.

MR. TORLEY: Though the garage impinges on the front yard, do you not feel or is there any evidence that it causes sight line problems for drivers on Cherie Lane?

MR. COPLAN: No.

MR. REIS: Accept a motion?

MR. TORLEY: Yes.

MR. REIS: I make a motion that we approve the Coplan's requested variance at their property at 18 Cherie Lane.

MR. MC DONALD: Second it.

ROLL CALL

MR. REIS	AYE
MR. KANE	AYE
MR. RIVERA	AYE
MR. MC DONALD	AYE
MR. TORLEY	AYE

FORMAL DECISIONS

1. DIGERATU
2. FIDANZA

MS. CORSETTI: They were supposed to be mailed out, my apologies.

MR. KANE: I move we do the minutes and the formal decisions at the next meeting.

MS. CORSETTI: I will include them with the next batch.

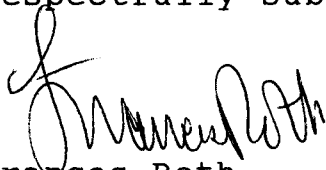
MR. KANE: I move we adjourn.

MR. MC DONALD: Second it.

ROLL CALL

MR. REIS	AYE
MR. KANE	AYE
MR. RIVERA	AYE
MR. MC DONALD	AYE
MR. TORLEY	AYE

Respectfully Submitted By:


Frances Roth
Stenographer

5/30/02